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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Francisco Gaxiola,

10 Petitioner,

11 v.

12 Ryan Thornell, *et al.*,

13 Respondents.
14

No. CV-24-02221-PHX-JJT (MTM)

ORDER

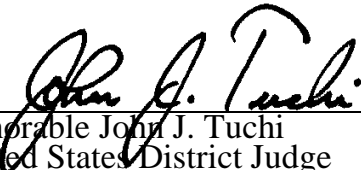
15 Before the Court is the Report and Recommendation (Doc. 17, “R&R”) of United
16 States Magistrate Judge Michael T. Morrissey. The R&R concludes the Court should
17 dismiss with prejudice Francisco Gaxiola’s Petition under 28 U.S.C. § 2254 for a Writ of
18 Habeas Corpus by a Person in State Custody (Doc. 1, “Petition”) as untimely and without
19 entitlement to equitable tolling. In the R&R, Judge Morrissey warned the parties that they
20 had fourteen days from the date of service of the R&R to file any specific written objections
21 to it with the Court. Judge Morrissey further warned that “failure to timely file objections
22 [to the R&R] may result in the acceptance of [it] by the District Court without further
23 review.” (R&R at 9.) It has now been three months since entry of the R&R and Petitioner
24 Gaxiola has filed no objections thereto. The Court is thus empowered to accept the
25 recommendations without further review. It nonetheless elects to conduct a review of the
26 recommendations on their merits; upon doing so, the Court concludes that adoption of
27 Judge Morrissey’s recommendations, as well as his reasoning as set forth in the concise
28 but thorough R&R, is justified.

Petitioner's state conviction for robbery became final for purposes of AEDPA¹ on June 20, 2020, when the Arizona Court of Appeals affirmed his conviction and sentence and thirty days had elapsed thereafter without him seeking review by the Arizona Supreme Court. At that point, AEDPA's one-year limitations period began to run, and did run for 34 days until it was tolled by Petitioner's timely PCR filing in the state trial court. The AEDPA limitations period resumed running on February 27, 2023, when the state court dismissed the PCR proceedings and Petitioner did not seek further review there. It ran for another 331 days, until January 25, 2024, when the limitations period exhausted. Petitioner did not file the instant Petition until August 21, 2024, nearly seven months too late. Judge Morrissey correctly determined that Petitioner did not state adequate basis for equitable tolling of the AEDPA limitations period, because Petitioner's lack of awareness of the limitations period is not an external force and in any event is not an extraordinary circumstance. *E.g., Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006). And Petitioner presents no new and reliable evidence of actual innocence to trigger review under *Schlup v. DeLo*, 513 U.S. 298 (1995). For these reasons,

IT IS ORDERED adopting in whole the R&R (Doc. 17) submitted by Judge Morrissey and dismissing with prejudice the Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. 1) as untimely and not subject to equitable tolling.

IT IS FURTHER ORDERED denying a certificate of appealability, as the Court concludes dismissal is justified by a plain procedural bar and reasonable jurists would not find the procedural ruling debatable. The Clerk of Court shall enter judgment and terminate this matter.

Dated this 15th day of April, 2025.


 Honorable John J. Tuchi
 United States District Judge

¹ Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. Section 2241 *et seq.*